



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO SAFETY-KLEEN SYSTEMS, INC. EPA ID No. VAD000737346

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and Safety-Kleen Systems, Inc. for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and -1401.
2. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "EPA" means the U.S. Environmental Protection Agency.
8. "Facility" or "Site" or "Safety-Kleen Chesapeake" means the Safety-Kleen Systems, Inc. facility located at 4545 Bainbridge Boulevard, Chesapeake, Virginia.

9. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
10. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
11. "LQG" means large quantity generator, a hazardous waste generator that generates 1000 kilograms (2200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(a)-(b) and (g)-(l).
12. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
13. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
14. "RCRA Subtitle C" means Resource Conservation and Recovery Act (as amended) Subtitle C, 42 United States Code (USC) § 6901 and implementing regulations codified in Title 40 of the CFR Parts 124 and 260 through 270, a federal program to manage hazardous waste from "cradle to grave".
15. "Regulations" or "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the CFR, with the effected date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.
16. "Safety-Kleen" means Safety-Kleen Systems, Inc., a corporation authorized to do business in Virginia and its members, affiliates, partners, subsidiaries. Safety-Kleen Systems, Inc. is a "person" within the meaning of Va. Code § 10.1-1400.
17. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.
18. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.

21. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.

SECTION C: Findings of Fact and Conclusions of Law

1. Safety-Kleen is an environmental products and services company. One of the services provided by Safety-Kleen is the transport and management of hazardous waste from hazardous waste generators for final approved disposal, including documents ("manifests") associated with the transport and management of hazardous waste. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations. Safety-Kleen Chesapeake also operates as a Hazardous Waste Transporter under EPA ID No. SCR000074591 and Virginia Hazardous Waste Transporter Permit No. SCR0000745918.
2. Safety-Kleen Chesapeake submitted a RCRA Subtitle C Site Identification Form (June 7, 1985) that provided notice of regulated waste activity at the Facility. Safety-Kleen Chesapeake was issued EPA ID No. VAD000737346 for the Facility. Safety-Kleen Chesapeake is classified as a permitted hazardous treatment, storage facility (TSF), and a LQG. Following earlier TSF permits, the current TSF permit was issued October 30, 2008 and expires October 30, 2018.
3. On March 12, 2014, Safety-Kleen Chesapeake submitted an Exception Report (40 CFR 262.42(a)(2) dated March 7, 2014 to DEQ regarding Uniform Hazardous Waste Manifest number 003670377SKS regarding a 55 gallon drum hazardous container ("drum") of paint (EPA Hazardous Waste Codes D001, D018, D035, D039, F003, and F005) at the Facility. The drum had been shipped (May 31, 2013) from the Safety-Kleen Chesapeake facility to a Safety-Kleen South Carolina facility without a valid manifest; the manifest was a photocopy of the original.
4. The Exception Report was received by DEQ 280 days after the incident (September 26, 2013).
5. According to Safety-Kleen Chesapeake, the original manifest had initially, inadvertently, been sent to Safety-Kleen South Carolina (included with another shipment of drums and associated manifests) without the associated drum (the drum was still located in Safety-Kleen Chesapeake). Reportedly, Safety-Kleen South Carolina, instead of terminating the manifest since it had arrived without an associated drum, photocopied the original manifest and sent the photocopy to Safety-Kleen Chesapeake.
6. Safety-Kleen Chesapeake records indicate that the drum and photocopied manifest was then shipped to, and arrived at, Safety-Kleen South Carolina on June 5, 2013. Based upon all available information, and the fact that the drum could not be located at any Safety-Kleen location, Safety-Kleen has made the

assumption that the drum was appropriately shipped to the final destination and disposal point at Safety-Kleen Kentucky.

7. 40 CFR 262.4(a)(2) and 9 VAC 20-60-262 require an Exception Report to be submitted within 45 days of incident.
8. 40 CFR 262.40(a), 40 CFR 262.20(a)(1), 40 CFR 262.23(a) and (b), and 9 VAC 20-60-262, 9 VAC 20-60-262, 9 VAC 20-60-263, and 9 VAC 20-60-480.B require preparation of a proper manifest for the shipment of hazardous waste.
9. 40 CFR 268.40(a) and 9 VAC 20-60-268 require compliance with treatment and disposal requirements for land disposal restricted wastes.
10. On June 3, 2014, based on the March 12, 2014 Exception Report and follow-up information, the Department issued a Notice of Violation to Safety-Kleen Systems, Inc. for the violations described in paragraphs C(2) through C(8), above.
11. On June 26, 2014, Department staff met with Safety-Kleen representatives to discuss the violations noted in the NOV.
12. Based on the observations of the March 12, 2014 Exception Report, follow-up information, and the June 26, 2014 meeting, the Board concludes that Safety-Kleen has violated 40 CFR 262.4(a)(2), 40 CFR 262.40(a), 40 CFR 262.20(a)(1), 40 CFR 262.23(a) and (b), 40 CFR 268.40(a), 9 VAC 20-60-262, 9 VAC 20-60-262, 9 VAC 20-60-262, 9 VAC 20-60-263, 9 VAC 20-60-268, and 9 VAC 20-60-480.B as described in paragraphs C(2) through C(8), above.
13. Safety-Kleen provided information at the June 26, 2014 meeting that the Facility has returned to compliance and taken actions to prevent a re-occurrence of the incident.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it pursuant to Va. Code § 10.1-1455, the Board orders Safety-Kleen and Safety-Kleen agrees to pay a civil charge of \$20,000.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Safety-Kleen shall include its Federal Employer Identification Number (FEIN) 396090019 with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Safety-Kleen shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Safety-Kleen for good cause shown by Safety-Kleen, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For the purposes of this Order and subsequent actions with respect to this Order only, Safety-Kleen admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. Safety-Kleen consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Safety-Kleen declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Safety-Kleen to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority. Safety-Kleen does not waive any rights or objections it may have in any enforcement actions by federal, other state or local authorities arising out of the same facts or facts similar to those recited in this Order.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Safety-Kleen shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Safety-Kleen shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Safety-Kleen shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the TRO Regional Director within 24 hours and in writing within three business days, of learning of any condition above, which Safety-Kleen intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Safety-Kleen. Nevertheless, Safety-Kleen agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Safety-Kleen has completed all of the requirements of the Order;
 - b. Safety-Kleen petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Safety-Kleen.

Termination of this Order, or any obligation imposed in this order, shall not operate to relieve Safety-Kleen from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Safety-Kleen and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Safety-Kleen certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Safety-Kleen to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Safety-Kleen.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between parties other than those expressed in this Order.
15. By its signature below, Safety-Kleen voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2014.

Regional Director
Department of Environmental Quality

Safety-Kleen Systems, Inc. voluntarily agrees to the issuance of this Order.

Date: 9/11/14 By: [Signature], SVP & Asst. Secretary
(Person) (Title)

State of Texas

City/County of COLLIN

The foregoing document was signed and acknowledged before me this 11 day of

September, 2014, by Virgil W. Duffie III who is Senior Vice President and Assistant Secretary of Safety-Kleen Systems, Inc. on behalf of the company.

[Signature: Caroline D. Cook]
Notary Public

Registration No. _____

My commission expires: _____

Notary seal:

